

**OFFICE OF THE CLERK  
UNITED STATES DISTRICT COURT  
Northern District of California**

**CIVIL MINUTES**

**Date:** January 4, 2023

**Time:** 9:55- 11:35

**Judge:** EDWARD M. CHEN

1 hour, 40 minutes

**Case No.:** 18-cv-04865-EMC

**Case Name:** In re Tesla Inc. Securities Litigation

**Attorneys for Plaintiffs:** Nicholas Porritt, Adam Apton, Elizabeth Tripodi,

**Attorneys for Defendants:** Michael Lifrak, Ellyde Thompson, Anthony Alden, Alex Spiro, Alex Bergjans, Kyle Batter, William Price

**Deputy Clerk:** Vicky Ayala

**Court Reporter:** Debra Pas

**PROCEEDINGS**

Second Pretrial Conference - held

**SUMMARY**

Parties stated appearances.

The Court discussed various logistical matters. The Court explained that it would grant the parties' stipulation regarding trial logistics in part but would require the parties to file any response to evidentiary objections by 3pm on the day before trial. *See Docket No. 526.* The Court further explained that trial would run from 8:30am to 2pm on each day of trial. The Court will run a full day of trial on January 17 and possibly on January 27. It may recess on January 30. The Court targets February 1 as date to get case to the jury. The Court agreed to allow the parties additional time to conduct voir dire (*i.e.*, 30-45 minutes each). Parties will have the ordered list of jurors. Court will take the lead on hardship voir dire.

The Court discussed the possibility of excluding unvaccinated individuals from the jury pool, which counsel for Plaintiff agreed with. Counsel for Defendants stated that they would confer with their clients and would report back shortly regarding whether they would stipulate to screen out unvaccinated individuals from the jury pool. Court discussed its experience in prior trials in which it found only a small proportion of the pool is not vaccinated and that screening for vaccination did not result in the exclusion of any cognizable demographic groups. Court also stated its view that those prospective jurors who might be deemed to hold a particular view or philosophy possibly associated with unvaccinated status did not constitute a cognizable group under the Sixth Amendment. Court also noted that in its experience, informing the jury that only vaccinated individuals would serve gave great comfort to those presenting individual or family medical risks. Court also noted there are court staff who present such risks.

The Court discussed jury instructions and the verdict forms with the parties. The Court noted that it may schedule another jury instruction session with Ms. Hirst, and that it intends to issue its proposed set of instruction shortly.

Finally, the Court heard argument on Defendants' Emergency Motion to Compel a Supplemental Deposition of Dr. Michael Hartzmark. *See* Docket No. 527. For the reasons stated on the record, the Court granted the motion in part. Professor Hartzmark shall be available for a 1 hour video deposition limited to the topics set forth in his supplemental report; this deposition shall take place by or before January 9, 2023.

Defendants may file by January 6, 2023, a two-page letter seeking leave to file a *Daubert* motion. Plaintiff shall file a two-page response by or before January 11, 2023. No further briefing regarding Professor Hartzmark or Professor Heston's reports or methodologies shall be permitted without express leave of court.

**CASE CONTINUED TO: January 13, 2023, at 9:00 AM via Zoom** for a Status Conference to discuss Jury Questionnaires and excusing any individuals from jury selection on January 17, 2023.